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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of ROBERT J. and  
KELLEY E. ISAAC.

ROBERT J. ISAAC,

Appellant,

v.

KELLEY E. ISAAC,

Respondent.

G056066

(Super. Ct. No. 15D005618)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Erick L. Larsh, Judge. Affirmed.

Robert J. Isaac, in pro. per., for Appellant.

Kelley E. Isaac, in pro. per., for Respondent.

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Appellant Robert J. Isaac (husband) appeals from an order denying his motion to vacate portions of the judgment of dissolution of his marriage to respondent Kelley E. Isaac (wife). The parties entered into a stipulation to, among other things, sell the family residence, which was incorporated into the judgment. Husband claims he agreed to two provisions in the stipulation based on mistakes of fact and they should be set aside under Family Code section 2122 (all further statutory references are to this code unless otherwise stated). Husband did not meet his burden to show the court clearly abused its discretion or there was a miscarriage of justice. We affirm the order.

### **FACTS AND PROCEDURAL HISTORY**

During the dissolution action, in March 2017 the parties entered into a written stipulation (Stipulation) to divide their property. As to their residence (Residence), the parties agreed it would be sold to wife and the parties' son (son) for \$745,000. The equity was to be split evenly after payment of closing and escrow fees and delinquent property taxes. Husband agreed to vacate the Residence within 90 days after close of escrow. A separate portion of the Stipulation provided husband would net not less than \$317,500 from sale of the residence.

The parties also stipulated that certain real property in Hawaii was to be awarded to wife as her separate property. Wife was to be responsible for all past and future tax liability. Husband was required to sign a quitclaim deed transferring any interest to wife within three days of close of escrow on the Residence.

Husband was "ordered to cooperate w/ sale, closing and related actions" regarding sale of the residence. The Stipulation also provided if either party refused to execute any documents regarding the sale, the documents could be signed by the court clerk.

In late April 2017 wife filed a motion seeking, among other things, to require husband to sign all escrow and sale documents. In his opposition husband stated

he refused to sign the documents because they showed only son as the buyer, not wife and son as he had agreed.

In connection with the motion, wife's attorney filed a declaration explaining why only son would be purchasing the Residence. It stated wife's credit was "poor," primarily due to husband's failure to pay certain community obligations, as he was ordered, during the action. This would cause a significant increase in the interest rate on the loan. Thus, it was beneficial to have son as the sole purchaser. When son explained this to husband, husband refused to sign the sale documents. Wife was subsequently "able to get underwriting [to] approve her to be on the" agreement without an increase in interest. Husband refused to sign those documents either.

The court ordered wife's attorney to prepare a judgment and submit it to husband's counsel to approve form and content. The minute order did not reflect a ruling on wife's motion. There is no reporter's transcript of this hearing in the record.

The judgment incorporating the Stipulation was entered in August 2017.

Several days thereafter wife filed another motion seeking to have the clerk of the court sign the purchase and sale agreement (Sale Agreement) for the Residence on husband's behalf. In his opposition husband set out at least 15 reasons why he would not sign the Sale Agreement and asked the court to modify it. As pertains to this appeal, his reasons for not signing included a discrepancy in wife's credit score and wife's failure to provide a credit report to him; the portion of the Sale Agreement dealing with seller remaining in possession after close of escrow was blank and did not provide for him remaining for 90 days; and the Sale Agreement required seller to pay homeowner association fees, and since both parties were sellers, the fees should be divided evenly.

The court appointed the clerk of the court to sign and/or initial several documents in connection with the sale on behalf of husband. The record does not contain a reporter's transcript for the hearing on this motion.

In October husband filed his motion to set aside two paragraphs of the Stipulation, i.e., the paragraph dealing with sale of the Residence and the one dealing with the Hawaii property. As to the Residence, he requested the court vacate the Stipulation based on impossibility of performance and wife's mistake of fact and asked the court to order the Residence sold and he receive net proceeds of \$317,500, or in the alternative, give him five months to purchase the Residence.

As to the Hawaii property, husband claimed the Residence and Hawaii property were "linked" because the Stipulation provided he would quitclaim the Hawaii property within a few days after escrow closed on the Residence. Although not clearly stated, the substance of husband's request was that the Stipulation as to the Hawaii property be set aside based on mistake of fact, impossibility and fraud, and the property be sold with the equity divided among the parties equally.

Before the hearing on husband's motion wife filed a request to have the court appoint the clerk to sign loan and escrow documents as to the sale of the Residence because husband refused to do so. Husband filed a multi-page opposition. The court granted the motion.

At the hearing in January 2018 the court noted escrow "should have closed way back." It observed the "real issue is [husband] doesn't want to sell the house, never has wanted to. It was a long, drawn-out case. And the truth is . . . he's dragging his feet." "[T]he things that he's negotiated are things . . . that would only foil the sale of the property and undermine the judgment completely." When husband's counsel stated husband did not have a copy of the purchase agreement, the court responded, "See, again, that's the problem that we always have." The court vacated that portion of the Stipulation giving husband 90 days to vacate after close of escrow and changed it to 60 days.

The court also approved a provision charging husband, as seller, with costs of sale because "[t]ypically the seller pays." When husband argued he would not net

\$317,500 as provided in the Stipulation, upon the court's question as to whether the costs were legitimate and due, husband responded that costs were anticipated but even with the costs he should net \$317,500. The court noted, "that doesn't appear to be possible."

After the hearing, the court denied husband's motion. As to payment of costs, in real estate sales contracts, typically the seller pays costs and that is the better position. Regarding the net amount for husband, the court found it was not the essence of the Stipulation. The essence was sale of the Residence and equal division of the equity.

At the hearing, wife offered to pay the difference so husband would net \$317,500. In addition, she argued that earlier in the proceedings, pursuant to stipulation, the court had ordered husband to pay property taxes and related costs on all of the parties' real property and he had not done so. She suggested the court order his share of property taxes be taken from his share of the proceeds. Although the court refused to make such an order, on the ground it was not before the court, in denying the motion it noted that if there "need[ed] to be adjustments or reimbursements, the Court [would] consider it."

The court reiterated that the case had "gone on well too long on some minor issues that should have been worked out." The parties' basic agreement was the price and based on the price, "everything else works out, and that's why if the 317 [*sic*] would not have worked out, so be it." The court refused to set aside the judgment on that basis.

Husband also challenged the court's prior order he surrender possession of the Residence within 60 days as opposed to the 90 days set out in the Stipulation. The court noted the basis for the 90-day period was the belief the Residence would be sold within 120 days. Instead, it was six to seven months later. So another 60 days was reasonable.

When husband noted he needed 90 days to find another place to live, the judge responded that was "exactly why I wouldn't set it aside. [Husband] doesn't want to have time to find a place; he just doesn't want to finish this case." The court reiterated it would consider requests to make adjustments but would not set aside the Stipulation.

## DISCUSSION

Under section 2122, subdivision (e), a stipulated judgment or portion thereof may be set aside based on mistake of law or fact, whether mutual or unilateral. Because husband did not request a statement of decision we infer all findings of fact and law to support the judgment. (§ 2127; Code Civ. Proc., § 634.) “A judgment or order of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent.” (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 977-978.) Husband must “affirmatively demonstrate error.” (*Id.* at p. 978.) Specifically, he must show “the facts alleged as the grounds for relief materially affected the original outcome” and he “would materially benefit from the granting of the relief.” (§ 2121, subd. (b).) We reverse a decision denying a motion to set aside only if there has been a clear abuse of discretion leading to an “injury sufficiently grave as to amount to a manifest miscarriage of justice.” (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.)

Here husband has not made the requisite showing. Contrary to his motion where he pointed to wife’s alleged mistake of fact, here he relies on his alleged “mistaken beliefs” wife and son would buy the Residence, buyers and sellers would split sales costs, he would net \$317,500 from the sale, and he would be able to live in the Residence for 90 days after close of escrow. However, none of these beliefs are sufficient to justify setting aside the subject provisions of the Stipulation.

As to the ultimate purchaser of the Residence, husband has not shown how this alleged mistake harmed him or materially affected the original outcome. It did not affect any provision of the Stipulation, including the sales price.

Regarding costs of sale and netting of \$317,500, husband’s arguments are less than compelling. He is not even clear on his actual mistake, suggesting he was mistaken either that apportionment of the costs of sale would not affect his net proceeds or that he was to pay the sales costs. Further, his claim this results in an inequitable

division of property fails. A judgment is not set aside under section 2122 “simply because subsequent circumstances caused the division of assets or liabilities to become inequitable.” (§ 2123.)

Once again, husband failed to show these alleged mistakes would harm him sufficiently to result in a manifest miscarriage of justice. In considering husband’s arguments, the court noted these elements were not the essence of the Stipulation. Generally sellers pay sales costs. Moreover, as to the net amount to be paid to husband, wife had offered to make up the difference. The court also indicated it would consider adjustments to the terms of the sale. This was more than adequate to protect husband.

In addition, husband has completely failed to explain why that portion of the Stipulation dealing with the Hawaii property should be set aside. This is waived for failure to provide authority or reasoned legal argument. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Finally, as to remaining in the residence for 90 days, again, husband fails to articulate why this alleged mistake was material or created harm leading to a manifest miscarriage of justice. As the court noted, he had remained in the Residence for six or seven months while the sale was pending. Further, the court found the real reason husband was challenging this provision was because he did not want the dissolution action to be completed. This negates a finding of mistake. We do not reweigh the court’s determination of credibility. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531.)

Husband’s reliance on *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 144 and *In re Marriage of Brewer and Federici* (2001) 93 Cal.App.4th 1334, for the proposition a stipulated judgment may be vacated due to a party’s inaccurate or incomplete information is unwarranted. In both cases, the stipulation was set aside due to the failure of a spouse to make a complete and full disclosure of all the parties’ assets and

liabilities when the settlement was being negotiated. (*Varner*, at p. 143; *Brewer and Federici*, at pp. 1346-1347.) That is not the case here.

In sum, it was reasonable for the court to conclude the alleged mistakes did not materially affect the original outcome, and there was no manifest injustice to husband. Denial of the motion was not an abuse of discretion.

#### **DISPOSITION**

The order is affirmed. Wife is awarded costs on appeal if she incurred any.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.